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SOME THOUGHTS ON THE POLITICAL DEVELOPMENT OF THE JAPANESE PEOPLE

PART VI. THE CONSTITUTION AND RECENT TENDENCIES

By David S. Spencer, D.D., Nagoya, Japan

I. PREPARING THE WAY FOR THE CONSTITUTION

"We, the people of the United States, in order to form a more perfect union," says the opening of the Constitution under which we are shielded.

"The Empire of Japan shall be reigned over and governed by a line of emperors unbroken for ages eternal," are the words with which the constitution of Japan greets us. Each in its opening expression breathes the spirit of the nation in which it was born. In the first the central theme is the people, human liberty, democracy; in the second, the ruler, an imperial house, autocracy. The thought of the first is to perpetuate a nation of free people; that of the second, to perpetuate a throne, a ruling house. The one takes a far view of real national interests; in the other, the people are nowhere in sight. In America, national stability resides in a strong people. In the Rising Sun Kingdom, a strong people was to be feared, and national stability secured through making strong the imperial house.

The constitution of Japan can be properly understood only when we study its genesis and the underlying causes for its provisions. We thus find that racial characteristics, insular setting, feudalistic and family influences abound.

How did this constitution, an interesting document in itself, ever come into existence? This is the way it happened:

Before the coming of Commodore Perry, some of Japan's brightest men, a few only of her millions, had begun to study the development of nations, and saw that the people of Japan were being neglected—that they were not being given voice in any public matters. Such men as Kido, Okubo,

Okuma, and Itagaki began to petition the government for the granting of a constitution and houses of parliament, that is, for the political machinery by which to develop the people. It was the idea of these bright minds that no nation can be stronger than are the people who make up the nation. A list of these intrepid spirits is found in Part V.¹ Some of these men accompanied the Prince Iwakura mission to America in 1871. On June 20, 1875, the first deliberative assembly was opened in Tokyo. On September 6, 1876, Prince Arisugawa announced that the *genro-on*, a body of chief advisors to the crown, had been ordered to prepare a constitution, but the breaking out of the Satsuma rebellion in January, 1877, put a stop for the time to all such wider political plans. Nothing daunted, Okuma, on May 14, 1877, presented a petition through Kataoka to the emperor at Kyoto asking for the installation of constitutional institutions. The murder of Okubo, May 14, 1878, because it was mistakenly thought that he hindered the advance of measures for the uplift of the people, convinced the leaders that reforms must be hastened. This led to the sending of Ito to America and Europe in February, 1882, to study constitutional government. This he did, making somewhat wide investigation, but spending the greater portion of his time in Prussia, and returning in August the next year. The promise of a national assembly had been made by the emperor, October 12, 1881, and now attention was riveted to the drafting of a constitution. It was this imperial promise of coming parliamentary institutions which did much to console the people and lead to good results. As a preparatory step in this direction, a new order of nobility was created July 7, 1884, out of whom the house of peers was formed. Japanese writers often seem to take pleasure in the fiction that the Japanese constitution is an unsought gift of their emperor; and a pure fiction it is; for the pages of history reveal many a sigh and hope in the form of a petition for the erecting of constitutional machinery in Japan. Such were the petitions of Saigo,

¹ Spencer, D. S., *Political Parties and Tendencies*.

Itagaki and Soejima in 1873; Itagaki in 1877; the *Aikokusha* or Loyalty to the Country Association, producing a paper with 100,000 signatures; and the petition of Mr. Tōru Hoshi.²

II. CONTRIBUTING INFLUENCES FROM ABROAD

Not all the influences making for government by law came from Japanese environment. Just how much influence Prince Bismarck had over Ito in the writings of the constitution may be a matter of opinion; but there is on record an incident which, I think, has never been given proper publicity, and which may properly find place here. When General Grant's term of office as President had expired, he made a tour around the world, accompanied by Mrs. Grant, and several important friends, among whom was Mr. John Russell Young, of the American News Company. On arriving in Japan, an audience with the emperor was arranged for the General, and of this and other interviews it may be well to let Mr. Young tell his own story:

NOTES ON THE VISIT OF GENERAL GRANT TO TOKYO, 1879

The General was given residence in the Hama detached palace, or in Chinese the "Enryokwan" (Palace for receiving guests from afar.) The Japanese very kindly "arranged that at two o'clock on the afternoon of the Fourth of July the audience with the Emperor should take place." (This sort of delicate and thoughtful courtesy is genuinely Japanese.) General Grant was accompanied by Rear Admiral Patterson, Pay Inspector Thornton, and Lieutenant Davenport, Captain Benham of the *Richmond*, Captain Fitzhugh of the *Monongahela*, Commander Johnson of the *Ashuelot*, Lieutenant Springer and Lieutenant Kellogg, Judge John A. Bingham, American Minister, and Mr. John Russell Young; Mrs. Grant was also present. ("Around the World with General Grant," pp. 523-4.)

"In this palace took place a long personal interview between General Grant and the Emperor. . . . The Emperor sent word to General Grant that he desired to see him informally, and the General answered that he was entirely at the pleasure of His Majesty. Many little courtesies had been exchanged between the Emperor and Mrs. Grant, and the Emperor and his ministers kept a constant watch over the General's comfort. The day

² Uyehara, as above pp. 84, 86, 87; *Herald of Asia*, November 17, 1917.

fixed for the Imperial interview was unusually warm. At half past two in the afternoon (August 10th, according to Viscount Kaneko) as we were sitting on the verandah, a messenger came to say that His Majesty had arrived, and was awaiting the General in the little summer house on the banks of the lake, which I have described. The General, accompanied by Colonel Grant, Prince Date, Mr. Yoshida, and the writer, left the palace and proceeded to the summer house. We passed under the trees and toward the bridge. . . . We crossed the bridge and entered the summer house. Preparations had been made for the Emperor, but they were very simple. Porcelain flower pots, with flowers and ferns and shrubbery, were scattered about the room. One or two screens had been introduced. In the center of the room stood a table with chairs around it. Behind one of the screens was another table, near the window which looked into the lake. As the General entered, the Prime Minister (Prince Sanjo) and the Minister of the Imperial Household (Marquis Tokudaiji), advanced and welcomed him. Then, after a pause, we passed behind the screen, and were in the presence of the Emperor. His Majesty was standing before the table in undress uniform, wearing only the ribbon of a Japanese order. General Grant advanced, and the Emperor shook hands with him. To the rest of the party he simply bowed. Mr. Yoshida, (Mr. Kiyonari Yoshida, Japanese Minister to the United States then on leave of absence) acted as interpreter. The Emperor said: "I have heard of many of the things you have said to my Ministers in reference to Japan. You have seen the country and the people. I am anxious to speak with you on these subjects, and am sorry I have not had an opportunity earlier."

General Grant said he was entirely at the service of the Emperor, and was glad indeed to see him and thank His Majesty for all the kindness he had received in Japan. He might say that no one outside of Japan had a higher interest in the country or a more sincere friendship for its people.

A question was asked which brought up the subject—now paramount in political discussions in Japan—the granting of an Assembly and legislative functions to the people.

General Grant said that this question seemed to be the only one about which there was much feeling in Japan; the only one he had observed. It was a question to be considered with great care. No one could doubt that governments became stronger and nations more prosperous as they became representative of the people. This was also true of monarchies, and no monarchs were as strong as those who depended upon a parliament. No one could doubt that a legislative system would be an advantage to Japan, but the question of when and how to grant it would require careful consideration. That needed a clearer knowledge of the country than he had time to acquire. It should be remembered that rights of this kind:—rights of suffrage and representation—once given could not be withdrawn. They should

be given gradually. An elective assembly, to meet in Tokyo, and discuss all questions with the Ministry might be an advantage. Such an assembly should not have legislative power at the outset. This seemed to the General to be the first step. The rest would come as a result of the admirable system of education which he saw in Japan.

"The treaty between Japan and the United States," the question of "national indebtedness," of "Loochoo," and of a possible "War with China," were other subjects discussed, but of which no extended quotations were given.—Young: pp. 540-543.

III. THE WRITING OF THE INSTRUMENT

When we come to the practical work of drafting the constitution, we are no longer left to mere guesses of what happened. The writer was in the country during all the years of the process, but aside from the persons directly engaged in the process, nothing was known as to what was transpiring. All the work was performed behind closed doors, and any newspaper statements then made as to what was going on were mere guesses and unworthy of credence. Not until the great emperor, Prince Ito and Viscount Inouye had followed their ancestors was the silence really broken. On *Kigensetsu* February 11, 1919, the thirtieth anniversary of the granting of the constitution, Viscount Kentaro Kaneko, Secretary to Prince Ito in the drafting of the constitution, allowed to be made, through the columns of the *Jiji Shimpo*, a statement as to the work of drafting, and as to the nature of the constitution. Seeing this account, and questioning in my mind the accuracy of some of its statements, I secured an interview with Viscount Kaneko, during which he carefully outlined the process followed, corrected certain details, and after I had written out carefully the statement, had the courtesy to review and amend the same. The outline herewith made is, therefore, what may be considered an official statement of the case; and it is here indited, on this 11th of February, the thirty-first anniversary of the promulgation of that document by which Japan sought to place herself before the civilized world as a nation governed by *law* and not by a single human will.

THE BUILDING OF THE CONSTITUTION OF JAPAN

An interview with Viscount Kaneko, March 4, 1919

The persons chosen by Prince Ito to aid him in the work of writing the first draft of the Constitution were Viscount Inouye, who had charge of the Constitution and the Imperial House Law, Viscount Miyoji Ito, who had charge of the Law of the Houses, and Viscount Kentaro Kaneko, who prepared the Imperial Ordinance of the House of Peers and the Law of the Election of Members of the House of Representatives.

Prince Ito, then the *Samurai*, had returned from study of Constitutions in Europe in 1883, and in December 1885 began the difficult work of drafting the Constitution.

The Emperor had commanded Prince Ito to prepare the draft of the Constitution, and upon him alone rested the responsibility of accomplishing this task for the Sovereign. Of all men he is the one sole personality who carried this burden. Others discussed, criticised, offered amendments, and added their councils to the discussion, but upon Prince Ito rested the burden of furnishing the matter in due form for the body of this document.

Prince Ito had formed the conclusion from his investigations that Japan ought to have a Constitution differing in its fundamental nature from those of Western lands, so as to make it in harmony with the national polity of this country. The constitutions of Western countries have usually been wrung from the kings as the result of turmoil and strife; but the Constitution of Japan is a gift of the Emperor, and was freely conferred.

When we first gathered to begin our work, the Prince said to us, there is absolutely no necessity for you to follow after the examples laid down by other countries. We must have an entirely new Constitution, having always in mind that the national polity of our country has been and is and should be different from that of the others.

Western constitutions speak of "the King in Parliament" being clothed with power; implying that the King must work in and through the Parliament, and has not power alone to decide. Such constitutions are sometimes made to include forms of impeachment of the Sovereign, in case he does not conform to constitutional law. The Constitution of our country makes no such provision.

Early in 1886 we started work at the Premier's official residence at Nagata-cho. We worked each day. Our work usually began at 4 p.m., when the Premier could be free from official duties, and we sometimes continued till midnight. Finally the pressure of official duties began to interfere with our work on the drafting of the Constitution; then the Prince decided that we should work at his villa on Natsu-shima, or Summer-island—an island which is situated just in the mouth of the Yokosuka Harbor. The villa has been removed, and no one resides on that island now, as it is a fortified section.

Our method of work was this:—We would take up some section and prepare the matter belonging to it at the Nagata-cho office. Then the Prince would decide to go to Natsushima, where we could be quiet and meet with no interruptions, and there we would stay two or three days, and sometimes a week. There was no one with us but our body guards. We reached the island from Yokohama Harbor by using a small launch belonging to the harbor authorities or to the steamship company. The conference chamber was nothing but a small 12-jo room, opening southward. Nothing was to be seen from the room but water and a number of islands. The Prince, Viscounts Inouye and Ito and myself went from Tokyo. Strict precautions were taken to keep our work secret.

Each of us secretaries did his work as he thought he should do it, and Prince Ito never at any time doubted our loyalty and confidence. No one of us felt any necessity of asking another how he thought a given article should be drafted. Each man was left to do his best.

We often had heated discussions, and this was encouraged by Prince Ito, who listened attentively to what we had to say, and criticised us when he thought necessary. He urged us to speak without ceremony, and to pay no attention to the fact that he was Premier. "Instead," he said, "you must each consider himself the highest authority on Constitutional Law."

There were many occasions when we jointly opposed the views of the Prince. Then he would say, "You must not speak nonsense any more;" but none of us was afraid of his words. "You can't dictate to us," said Mr. Ito; and Mr. Inouye many times left the chamber saying: "The Prime Minister is not in a good temper today. Sayonara."

The work of drafting the Constitution continued at both Nagata-cho and Natsushima in this way till March 1888, when the first draft was finally completed.

The discussions of this draft in the Privy Council began February 8, 1888, and lasted till February 5th, 1889. I was present at all those sessions of the Privy Council. The method was this: Prince Ito, having resigned the Premiership, had become President of the Privy Council. Hence he presided at the meetings held for discussion. The Emperor always attended, at every session, and sat in an appropriate position, Prince Ito sitting near him at a table. A Secretary would be asked to read an article and then discussion would begin, the Secretary who wrote it often having to explain its meaning to the members of the Privy Council. The Emperor himself never took part in any discussion, but heard attentively all that was said by all the members. When the discussions had ended on a given day, the Minutes of the Secretary, in which all amendments had been inserted in red ink, were taken by Prince Ito into the presence of His Majesty, in a private room. The Emperor would then consider carefully what had been proposed, and approve or not as he thought best in the

interests of all his people. But he never decided these things in the Privy Council.

It has been asked if Prince Ito was not much influenced by the Prussian Constitution, and thus inclined to draft our Constitution in a like spirit. The only point which he sought to incorporate from the Prussian Constitution is the relation of the Sovereign to the Constitution and to the Parliament. In this point he liked the Prussian system better than that of England or any other country. The two forces which chiefly influenced us in our work were: (1) *The Federalist*, a publication originating in New York, and much used at the time of the adoption of the American Constitution by that state. We referred constantly to the arguments contained therein; I had it constantly by me; and (2) a remark made to our Emperor by General Grant. This took place in a little summer house, on an island in the little lake at the Hama-goten, where ex-President Grant was being entertained, in the summer of 1879. It was a hot day, and the Emperor called on General Grant, and we sat in the summer house for some time talking. In answer to a question about the constitution General Grant said it must be given to the people, and a Parliament must be erected; but in drafting the Constitution great care must be taken. The Constitution must grow naturally out of the nation's past history, and the franchise and legislative power must be given to the people only so fast as they have learned to make wise use of it. This statement of General Grant greatly influenced the Emperor, and it gave color to all our thought in drafting the Constitution. You can state this with my approval to the American people.

Another point in our Constitution which may be overlooked is the fact that it is shorter than most Constitutions. It has but 76 articles, and even these are each briefly stated, and simple. Other national constitutions are usually much longer.

Still another point is its flexibility. This is fundamental in its nature. It deals with principles only, and hence is not likely to demand radical change for a long time to come. Without any violation of its spirit or letter, it may be interpreted in a way to give large liberties to the people as they advance in a knowledge of political institutions.

There is another disputed point in connection with the office of Ministers of State. The 55th article of the Constitution says, "The respective Ministers of State shall give their advice to the Emperor and be responsible for it." Thus the Constitution does not necessarily limit the responsibility of the Minister to the Emperor, but simply says, "shall be responsible for it." It means that he is responsible, has a moral responsibility, *is* responsible. A distinct difference is made between personal responsibility and official responsibility. Hence should a minister of State make an official mistake, he is not held personally responsible for the consequences.

At this interview with Viscount Kaneko there was revealed an incident of real human interest concerning the emperor, who, in this constitution, is regarded as a lineal descendant of the gods. Condensing the conversation greatly it was this: In the midst of one of the sessions of the privy council when the constitution was under discussion, a messenger arrived to announce that a little son of the emperor was thought to be dying. Prince Ito, the president, turning to the emperor said:—"Would it not be the pleasure of your Majesty that we now adjourn, to allow your Majesty to attend the bedside of his sick son?" "Oh, no," replied His Majesty, "the illness of the son is a personal matter. Matters of state are a first duty," and the discussion continued. I replied to the Viscount that we had in our country a parallel case, where a Methodist bishop, while presiding at an annual conference, received a telegram announcing the death of his son. He showed the telegram to the conference secretary at his side. The secretary at once proposed adjournment of the conference. "No," said the bishop, "let us attend strictly to the work of the conference." "That is it," said the Viscount, "two men, on opposite sides of the earth, each moved by the same high sense of religious duty, places the work of his church or state above personal or family interests. That is noble loyalty."

IV. KIGENSETSU—FEBRUARY 11, 1889

It was a glad day, this Ascension Day, in Japan. Celebrations unique in character and gigantic in scale had been planned. All ministers had received imperial summons to the palace to have handed down to them by the hands of the emperor the long expected constitution. A hush such as the Orient alone understands held the capital in waiting. Then happened one of those events which to our unimaginative American minds seem so uncalled for. Mr. Arinori Mori, Japan's great minister of education, when about to enter his carriage on his way to the palace, was cut down by a fanatical Shintoist. And the deed was performed not by

the use of the honorable Damascan blade of Japan—but with a *debabōchō*, a vulgar kitchen-knife, used for the dirtiest of all work. The cause of the assassination was said to be that Mr. Mori, in visiting the sacred shrines at Ise, had been so irreverent as to push aside with his cane the curtain that veils the sacred precincts. Sad as was the event, and great as was the loss of this progressive mind to Japan, the news of the occurrence neither checked the ceremonies at the palace nor chilled seriously the ardor with which the people greeted the new day.³

February 11, 1919, was observed in Japan as the thirtieth anniversary of the promulgation of the constitution, and an important program was carried out in Tokyo. The ceremonies centered at the Constitution Memorial Hall, at Aoyama, Tokyo, the gift of the Emperor Meiji Tennō to Prince Ito. In this hall much of the work of preparing the constitution was carried on. The building, now of historic value, has been presented by Prince Ito, the son, to the imperial house, together with the statesman's library of 90,000 volumes.

Prince Kanin presided at these ceremonies and 1200 of Japan's most noted people were present. The house of peers presented, through its president, the following address to the throne:

PEERS ADDRESS THRONE

The House of Peers, on the occasion of the 30th anniversary of the promulgation of the Imperial Constitution, has addressed the Throne as follows:

May it please Your August Majesty:

Our late Emperor, cognizant of the progress of the world's affairs, moved by the noble desire of enhancing the people's happiness and developing their moral efficiency, and also for effecting a permanent consolidation of the basis of the Empire, formulated the Imperial Constitution and promulgated it amidst the universal rejoicings.

Since our Imperial Ancestor founded this Empire, the succeeding Emperors, pursuant of the will and aims of the preceding rulers, have been discharging their heaven-bestowed duties pertaining to the sovereignty over the State by adhering to the principle guiding the ruling authority and by avoiding aggressive

³ Personal Journal of the writer; *Japan Advertiser*, February 11, 1919.

oppression. The relations of the rulers and the ruled have been always cordial. In principle they have been Master and subjects; in sentiment, fathers and children. They have thus created a nation unique in the world, and its foundation dates back to the time immemorial.

The text of the Imperial Constitution had been compiled by consulting the European constitutions, but in its principle it has observed the sagacious policies and golden rule set down by the former Emperors and thus showed the people the ways they might follow. Our traditional good customs, in consequence, became more apparent and more commanding of admiration.

A faithful exponent of code

Your Majesty has been a faithful exponent of the noble code left by the late Emperor which is now thirty years old. During these years our Empire frequently faced national difficulties both at home and abroad, but the Imperial Constitution has been making a normal progress with beneficial results. Our social order has become increasingly strengthened and our national enterprises more efficient. We venture to pledge ourselves to further efforts in discharging our respective duties and to offer our humble services for the prosperity of the country.

We venture to thank Your Majesty most respectfully for sovereign benevolence and to pray for eternity of the Imperial regime and the long life of the Imperial Throne.

Your Majesty's most humble and obedient servant,
 PRINCE IYETATSU TOKUGAWA,
President of the House of Peers.

The lower house also passed unanimously a resolution on addressing the throne similarly today.

Three thousand university students paraded the streets, a thing that could not have been allowed thirty years ago. From Hibiya Park, the great commons for Tokyo, they marched to the house of representatives, where they were received with manifest approval by many of the members of the diet. A spokesman of the students then began to address the crowd, but the police prevented him from speaking. This interference of the police elicited angry protests, but nothing serious resulted. The young men marched to the palace grounds, outside Nijubashi, sang the national song, shouted *banzai* to the emperor and dispersed.

The ringing note of the orators of the day was the call for universal suffrage. Viscount Okuma declared that

"constitutional government of Japan has made no progress whatever in thirty years." Amidst all the rejoicings of the day runs a note of keen dissatisfaction.⁴

V. THE DOCUMENT CONSIDERED AS A WHOLE

What is the reason for the dissatisfaction of the Japanese people concerning their political affairs? If they do not like their constitution, why not say so? Since they have a parliament, why not seek redress through it? Is there any class faction, clique or influence, it is asked, that so operates as to prevent the people from getting what under a plain interpretation of the constitution properly belongs to them?

In a recent article of very great value⁵ Dr. S. H. Wainwright of Tokyo has discussed "Japan's Transition from the Rule of Persons to the Rule of Law." He therein cites the leading contemporary Japanese writers on the constitution, analyses their position, points out errors, and concludes that, generally speaking, neither Japanese nor foreign critics have attributed to the constitution its full value as a political stabilizer. By the promulgation of this constitution, he continues, Japan has become a "Legal State," and has thus placed herself far in advance of any other Asiatic state. This constitution is not merely a law binding upon the Japanese subject, but is a law by which the imperial house agrees to limit and control the Imperial prerogatives. As Ito also points out⁶ this constitution protects both sovereign and subject.

Dr. R. Masujima of Tokyo, a member of the American Bar, in an important address at Manila, also referred⁷ to the legal status which modern Japan has assumed.

We must not overlook the very important point here raised by two eminent authorities. The position of Japan in the international sphere has been greatly enhanced through this imperial favor.

⁴ *Japan Advertiser*, February 11 and 12, 1919.

⁵ *Japan Advertiser*, January 30, 1919.

⁶ Ito, *Commentaries*, as above.

⁷ *Japan Advertiser*, February 9, 1919.

At the same time we must not fail to measure exactly what powers this constitution really does confer—where it falls short, if at any point it seems to fail—and to discern, if we can, the sources of political unrest in Japan.

In passing we should note that in Japan the emperor is above the law.⁸ The British sovereign is under the law,⁹ that law made by *the people*, with or without the king's consent. The president of the United States is under the law, made by *the people*, with his consent or even in spite of his opinions, and he may be impeached for maladministration.¹⁰ The emperor of Japan is the law and the source of the law.¹¹ Under article VIII of the constitution he may issue laws, or ordinances, on the ground that he is the *source* of law. These ordinances require to have the approval of the diet at its next session, but that may be when the mischief, if such be possible, has been done; and the diet has not power to make its nullification retroactive.

All the different legislative as well as executive powers of State, by means of which He reigns over the country and governs the people, are united in this Most Exalted Personage, who thus holds in His hands, as it were, all the ramifying threads of the political life of the country, just as the brain, in the human body, is the primitive source of all mental activity manifested through the four limbs and the different parts of the body.¹²

The emperor of Japan is inviolable. No law court can touch him. By means of the imperial house law, issued simultaneously with the constitution, the imperial family is placed in a sense outside of the constitution, and all questions of succession, ascension, imperial estates, financial allowances, litigations, etc., are determined by the special provisions of this imperial house law.¹³ Can any student of history fail to see what such constitutional provisions tend to provoke?

⁸ Ito, *Commentaries*, pp. 7, 9.

⁹ Masujima, as above, *Japan Advertiser*, February 9, 1919.

¹⁰ Reed, Thomas Harrison, *American Government*, p. 237.

¹¹ Ito, as above, p. 10.

¹² Ito, as above, p. 7.

¹³ Ito, as above, p. 172, "Imperial House Law."

In a similar way as already pointed out when treating the diet, the "Imperial Ordinance concerning the House of Peers,"¹⁴ "The Law of the Houses,"¹⁵ and "The Law of Finances,"¹⁶ take out of the hands of the people matters which in British and American, in modern political polity generally, are considered as belonging essentially to the people. The restrictions upon the activities of the diet are severe. If it fails to pass the budget, the government is authorized to fall back upon the budget of the previous year. If the diet fails to pass projects of law submitted by the government, the government can dissolve the diet, require a new election and gain its point in this way. The government has never yet failed to win such an election. Under the plea of the demands of state interests, it can control the judiciary. Through the aid of the house of peers, most of whom owe their places in the upper house to the imperial favor, the bureaucracy can defeat any legislation it may not favor. By thus centering the legislative, the judiciary and the executive departments of government all in one person, and with the ministry all amenable to the emperor instead of to parliament, have not the makers of the constitution of Japan tied up things a little too tight? This is the opinion of many Japanese leaders today and of many foreign students of the situation as well. The day is surely passing when autocracy can blind an intelligent people as the bright people of Japan are now bound.¹⁷

Viscount Kaneko asserts, and rightly, that the constitution of Japan is characterized by brevity and by being capable of interpretation in either a liberal or a conservative sense. May it not, however, be that this very element of indefiniteness is also an element of weakness leading to dissatisfaction?

Article XXIX of the constitution reads:

Japanese subjects shall, within the limits of law, enjoy the liberty of speech, writing, publication, public meetings and associations.

¹⁴ Ito, as above, p. 186.

¹⁵ Ito, as above, p. 191.

¹⁶ Ito, as above, p. 298.

¹⁷ Uyehara, as above, pp. 63-117, 151, 161, 167; McLaren, *A Political History of Japan During the Meiji Era*.

To show how the "limits of law" may be made to withhold what the constitution has apparently given, let a Japanese editor reveal to us another side to the nature of this constitution:

THE REGULATION OF PUBLIC OPINION¹⁸

The regulation of public opinion in Japan falls under three main heads: legal, administrative and judicial.

I. Japanese laws prohibit publication of (1) Comments on the case sub judice, (2) Secret documents of the government, (3) Discussions, proceedings of the secret sittings of any public conference, (4) Any article or opinion liable to induce crime, or intended to attack or defend the accused, (5) Any news or article detrimental to the welfare of society or inducive to disturbance of public order, and (6) Anything whatsoever which impairs the dignity of the Imperial Household.

II. The administration is empowered to regulate at its will any kind of public opinion, whether it is press or book or speech. The Secretary of Interior has supreme right to decide what opinion shall prevail and what shall be suppressed. He has the right to put under ban any daily, magazine or book. He can permanently entomb a *Wealth of Nations*, an *Origin of Species*, a *Faust*; he can silence a Demosthenes, a Cicero, a Webster, he can suppress a *New York Times*, and above all a Hearst type of yellow journal if only he so wishes. This an authority which has never been granted to a mortal since the Christian era, save the Pope. Not only the minister of interior, but the ministers of the army and navy exercise similar authority over public opinions on military questions. There is also the minister of foreign relations who sees to it that no one talks on questions which he does not wish the people to discuss.

III. The department of Justice exercises an independent power to control public opinion. Secret court proceedings are never allowed to be published; publication of any facts concerning a crime before preliminary examination is through is punishable by a severe penalty. Further, the courts enjoy the right to regulate public opinion on the basis of past judgments.

The failure to conform to the regulation is punishable by severe penalties varying from fine to a long imprisonment. The viciousness of the regulation is in its lack of precision, definiteness, in a word, in its arbitrary nature. As the consequence, editors, lecturers, authors are not sure when their publications may be suppressed, and when they shall be accused. This uncertainty has been the chief cause of the slow progress of Japanese public opinion. No free government, no democracy can grow where the institution of exchange of ideas is controlled by a few men and left to suffer a constant uncertainty as in the case of Japan.

¹⁸ *Japan Review*, Vol. IV, p. 68.

There is no objection for a rather fruitless attempt of Japanese elder scholars to prove that democracy has existed in Japan since time immemorial, but our real duty is to see the truth as it exists and be sure that any obstacle to progress shall be promptly removed.

Article LV declares "The respective Ministers of State shall give their advice to the Emperor, and be responsible for it." Responsible for what? Responsible to whom? No other article composing the seventy-six that make up the constitution has been the subject of greater contention and dissatisfaction than this one. The people want a Cabinet responsible to the Diet; the bureaucracy want the cabinet to remain under their control. The provision is equivocal and hence unsatisfactory.

Article LXXII means that amendments to this constitution can be made only upon recommendation by the emperor. Neither house is permitted to suggest such a change. The constitution is called by Ito "an immutable code of laws." Its "essential character" can never be changed."¹⁹ In this twentieth century when laws, both national and international, are having to meet the acid test of practical value as never before in all history, how unwise it seems to undertake to tie a great people up almost unchangeably to a set of rules drafted in the midst of such an environment as was that of Japan in 1889!²⁰

Another anachronism is the demand that the Ministers of Army and Navy in the Cabinet must be men in the active service in those branches. To this practice even thoughtful Japanese are now objecting.

It gives militarism all too strong control over the nation.

VII. CHANGES LIKELY TO BE CALLED FOR

Up to the present I have purposely given Japanese opinion the preference. We need to know their viewpoint. But we must not be blind to inherent defects in this constitution—defects which perchance Japanese publicists have not

¹⁹ Ito, as above, 153.

²⁰ Burton, Theodore, E., in *New York Times*, February 8, 1920.

yet discovered. While avoiding the application of strictly American standards to this Oriental people, history in general has valuable lessons for all of us; and we must not shrink from the frank and fair application of these principles to the Japanese constitution.

Some of the changes apparently already called for are:

1. A frank recognition by both Japanese and foreigners of the environment out of which this constitution sprang. Keep in mind what Viscount Kaneko has said about secrecy. Note what Mr. Motosada Zumoto, M. P., editor and proprietor of the *Herald of Asia*, has said upon this very point:

We refer to the existence of conservatives because, if the Constitution had been drafted in more liberal lines, they would have compelled postponement of its promulgation in 1889. To silence both radicals and conservatives, therefore, the Constitution was promulgated as "granted by the Emperor" (*kinkei*), without submitting its draft to the Imperial Diet for approval or confirmation. Prince Ito, who knew well enough that a nation's constitution could not be created but must evolve out of the minds of the people, had to adopt this somewhat unnatural method from the pressing need of effecting a revision of the onesided treaties with foreign powers, who would not recognize the tariff autonomy of a country not legally governed, nor remove the consular jurisdiction in one without a code of laws.²¹ Mark the subterfuge to which the bureaucrats drove Ito. Now compare this environment with that out of which the Constitution of the United States sprang. What has been the relation of the people to the framing of their fundamental law in each case? Is it not clear as the sunlight that Ito and his co-laborers were so hampered and opposed by the reactionary elements of the day that the production of a broad, safe and unchangeable instrument of government was rendered impossible?

2. Early provision for suitable amendments to this constitution, under proper safeguards. Article LXXIII and LXXIV of the constitution²² make any change in this fundamental law *impossible*, except by the emperor and at his own suggestion. Then the continued existence of the conservative forces which, in 1889, made necessary the

²¹ *Herald of Asia*, March 22, 1919, p. 704; Theodore E. Burton *New York Times*, February 8, 1920.

²² Ito, *Commentaries*, pp. 153-156.

tying up of political rights and privileges in this fashion might make the granting of political justice to the Japanese people *forever* impossible. But we have now come upon a time when no mere phraseology can save thrones. Where is the house of Hohenzollern? All the voices of history tell us that those governments are strongest which are built into the hearts of intelligent peoples with their full consent. Japan has never given her people their constitutional rights. She must either modify her constitution or face political upheaval. Let us trust her to find the road to political justice, peace and power.

3. The abolition of a double-headed government system. There are two governments in Japan—the one with constitutional approval headed by the cabinet, the other headed by the great general staff, but operating in practical defiance of the constitution. Among the leaders of this second group have been found since restoration days the strong men, mainly, from Satsuma and Choshu, who have built modern Japan. The military victories scored by Japan in 1895, 1900 and 1905 were due to the leadership of these men. These men, either personally or by means of their spokesmen, have filled all cabinet offices until the coming into power of the present Hara cabinet. To them Japan owes much. But today they are her danger. Since the Russo-Japanese war they have steadily risen in power, carrying with them men like Ito, Okuma, defenders of the people, and at times the whole country. To them must be charged the Annexation of Korea, the grasping of Manchuria and Inner Mongolia, the twenty-one demands against China, the troubles in Shantung, Fukien and Korea. It is their course which is causing Japan to be distrusted today in every land. Because of these men and their policies, Japan is losing the confidence of the world, and that at a time when she needs that confidence more than ever before.

But for the worthy Japanese people the day is not yet lost. Since the downfall of Germany, a distinct tide has set in against this militaristic bureaucracy, and this should have careful attention. The Okuma ministry fell because

the people of Japan opposed the ill-treatment of China.²³ The Terauchi ministry went out because it did nothing to create better neighborly feeling with China.²⁴

The attitude of the Japanese press is against taking advantage of China on the Shantung question.²⁵ The press has counselled wisdom regarding the Foochow incident, and Japan has withdrawn her gunboats with diplomatic explanation.²⁶ The people's representatives interpellated the government as to the general staff deceitfully sending 70,000 troops to Siberia in place of the agreed 7500, and the press has been unanimous in opposing the sending of reinforcements.²⁷ For perhaps the first time in history the military training school at Tokyo (their West Point) cannot get students to fill its classes.²⁸ For the crimes of the militarists in Korea, the chiefs had to resign, some subordinates were courtmartialed, and a new and liberal government has been set up, and the condemnation of these outrages by the Japanese press and by many prominent Japanese has been clear, positive and purposeful.²⁹ The demand for universal suffrage is strong and cannot be ignored. The people are beginning to find themselves, and the liberal elements are rising. This is the time for Japan to free herself for real progress.

4. The establishment of a cabinet responsible to the diet, and the education of the people in political institutions. By hiding behind the fiction that the ministers are appointed by and responsible only to the emperor, the bureaucracy has succeeded in hindering any real progress in political government. Both they and the politicians have appeared to fear the people, and hence have held them as far as possible from real participation in the activities of political life.

²³ *Japan Advertiser* and *Herald of Asia*.

²⁴ *Japan Advertiser* and conversations with leading Japanese.

²⁵ Consult leading Japanese papers. *Yomiuri*, January 8. 1920.

²⁶ *Japan Advertiser*, current issues Japanese press.

²⁷ *Japan Advertiser*, *Jiji*, *Tokyo Nichi-Nichi*, *Yomiuri*, *Kokumin*, *Herald of Asia*.

²⁸ *Japan Advertiser*.

²⁹ Current issues of Japanese and English periodicals, especially *Jiji Shimpō*, *Yomiuri* and *Kirisutokyo Shimbun*.

The electorate needs educating. They are a good and able people, and will respond at once to constructive leadership. The imperial house in Japan need never fear for its safety, if it will only take the people fully and honestly into its political confidence as the great Meiji Tennō evidently intended.

5. The abolition of secret methods of conducting both national and international affairs. The curse of Japan is official secrecy. This is essentially a feudalistic method, and is doing Japan great injury. It has rendered her people abnormally suspicious, both of each other, of the government and of other peoples. Much of what is most valuable in citizenship—a knowledge of the governments' plans and sympathy with them—is wanting in Japan, and loyalty is a blind impulse, and hence capable of being turned against the very government to which it is thought to be most loyally devoted. An open and frank treatment of the people of Japan and of foreign peoples and governments by the officials of the Japanese Empire would raise the standing of Japan at home and abroad.³⁰

The six articles, of which this is the closing, must have made it clear to the American reader that racial peculiarities, insular position, family institutional life and feudalistic training have constantly influenced the political development of this most interesting Japanese people. The retaining of what is best in their past, the enlisting of the people in their new life, and the purifying of the political stream generally is their great task.

³⁰ *Japan Evangelist*, July, 1917.